

**Letter of Findings Number: 02-20130598P**  
**Tax Administration**  
**For Tax Years 2008, 2009, 2010, and 2011**

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**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the late filing penalty and the ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer is a social club incorporated in Indiana as a Non-Profit Corporation in 2007. At the time of its incorporation, Taxpayer failed to obtain an exemption from tax as an organization described in Section 501(a) of the Internal Revenue Code. Taxpayer applied for tax exempt status under Section 501(c)(7) in August 2011. Taxpayer's application was approved on June 17, 2013, effective September 6, 2011. Taxpayer filed Indiana corporate income tax returns and paid tax due for tax years 2008 through 2011 on July 11, 2013.

The Indiana Department of Revenue ("Department") assessed late penalties and interest for failure to file the required returns and pay the tax due by the due date.

Taxpayer protests the assessment of late filing and late payment penalties. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Department assessed a late filing penalty for tax years 2008 and 2009 and a ten percent negligence penalty for tax years 2010 and 2011. Taxpayer protests the imposition of the penalties. The Department will determine whether the penalties imposed shall be waived.

A taxpayer who "fails to file a return" or "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . . is subject to a penalty." [IC 6-8.1-10-2.1](#)(a). Where there is a tax liability, the penalty is ten percent of outstanding tax, whether that is the full amount of tax or a delinquent portion. [IC 6-8.1-10-2.1](#)(b). Where there is gross income but no tax liability and a taxpayer fails to file a required return, the penalty is "ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250)." [IC 6-8.1-10-2.1](#)(g).

The Department shall waive the penalties described above if the taxpayer demonstrates that the failure to file a required return or pay tax due on or before its due date "was due to reasonable cause and not due to willful neglect." [IC 6-8.1-10-2.1](#)(d); see also [45 IAC 15-11-2](#). A taxpayer's "carelessness, thoughtlessness, [or] disregard or inattention to duties placed upon [it] by the Indiana Code or department regulations" are negligence and not reasonable cause. The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in failing to file a required return or pay tax by the due date. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2](#)(b) and (c).

In this case, Taxpayer provided documents showing that it registered with the Indiana Secretary of State as a Non-Profit Domestic Corporation in September 2007. Taxpayer stated that it was unaware that it had not obtained tax exempt status from the Internal Revenue Service (IRS) upon incorporation. Upon discovering its non-exempt status in 2011, Taxpayer promptly applied for tax exempt status. When the IRS accepted its application, Taxpayer filed the required Indiana corporate income tax returns for tax years 2008 through 2011. It also paid the outstanding tax due for tax years 2010 and 2011.

Taxpayer may have been careless in failing to ascertain that it did not have tax exempt status for several years. However, upon learning the facts, Taxpayer acted with ordinary business care and prudence to meet its statutory duties and obligations in Indiana. Consequently, the penalties shall be waived. However, the Department takes this opportunity to notify Taxpayer that it is now aware of its tax return filing obligations and that penalty may be imposed in the unlikely event that this scenario occurs again.

**FINDING**

Taxpayer's protest is sustained.

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